DePaul Law Review

Volume 24
Issue 2 *Winter 1975*

Article 16

Rights of the Mentally Disabled - The Conflicting Steps Taken in Illinois

Edward B. Beis

RIGHTS OF THE MENTALLY DISABLED— THE CONFLICTING STEPS TAKEN IN ILLINOIS

*Edward B. Beis**

The 1972 federal case of Lessard v. Schmidt *commenced a trend toward establishing procedural safeguards for the mentally ill. In 1974, the Illinois case of* People v. Sansone *brought this trend to a halt. Moreover,* Sansone *weakened the effect of the Mental Health Code of 1967. Mr. Beis looks at the developments which have taken place in the past year.*

INTRODUCTION

> Experience should teach us to be most on our guard to protect liberty when the government purposes are beneficient. . . . The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.[1]

THE progressive trend toward greater procedural protection for those drawn into the civil commitment process, initiated by *Lessard v. Schmidt*,[2] has been stunted, if not stopped. *Lessard*, drawing upon protections extended to juvenile proceedings,[3] applied criminal due process standards to the commitment process. The argument, that lesser standards are justified because the proceeding is labeled "civil" rather than "criminal," was rejected. However, in *People v. Sansone*,[4] the Illinois courts refused to extend criminal due

* Director, Patient Legal Services, Cook County Legal Assistance Foundation, Inc., Chicago, Illinois.

1. Olmstead v. United States, 277 U.S. 438, 479 (1928) (Brandeis, J., dissenting).

2. 349 F. Supp. 1078 (E.D. Wis. 1972), *vacated and remanded on other grounds*, 414 U.S. 473 (1974). On remand, the court simply met the specification requirements for identifying a class under Fed. R. Civ. P. 65(d) which the Supreme Court said had not been met. 379 F. Supp. 1376 (E.D. Wis. 1974). For a discussion of the 1972 decision *see* Note, *Civil Commitment of the Mentally Ill:* Lessard v. Schmidt, 23 DEPAUL L. REV. 1276 (1974).

3. *In re* Winship, 397 U.S. 358 (1970); *In re* Gault, 387 U.S. 1 (1967); Kent v. United States, 383 U.S. 541 (1966).

4. 18 Ill. App. 3d 315, 309 N.E.2d 733 (1st Dist.).

process standards to the civil commitment process.[5]

Advocates for patients' rights have begun to litigate several cases concerning the treatment provided by the Department of Mental Health (DMH). A state class action suit alleging the denial of treatment to mentally retarded patients has been filed.[6] Also pending is a federal class action petition for a writ of habeas corpus, which would augment treatment for patients who have been placed in the custody of the Department of Mental Health as unfit to stand trial for the alleged commission of a felony.[7] An Illinois circuit court upheld statutory amendments requiring physicians, with a limited license to practice, to take an examination to determine their professional qualifications.[8] In addition, some procedural safeguards have been extended to those patients who wish treatment but are being discharged against their will by the Department. Similar safeguards have been extended to those who oppose being transferred from one Department of Mental Health hospital to another because of the change in treatment which would occur.[9]

I. PROCEDURAL SAFEGUARDS IN THE COMMITMENT PROCESS

In *People v. Sansone*, a suit patterned on *Lessard*, the Illinois appellate court rejected several due process procedural safeguards required by *Lessard*.[10] As required by statute, the respondent was found to be "in need of mental treatment," *i.e.*,

---

5. For a description of this process in Cook County, Illinois, *see* Beis, *Civil Commitment: Rights of the Mentally Disabled, Recent Developments and Trends, 1972-1973 Survey of Illinois Law*, 23 DEPAUL L. REV. 42 (1973) [hereinafter cited as Beis]. For a general discussion of civil commitment in the United States, *see Developments in the Law—Civil Commitment of the Mentally Ill*, 87 HARV. L. REV. 1190 (1974). *See also* Note, *Civil Commitment—Due Process and the Standard of Proof*, 23 DEPAUL L. REV. 1500 (1974); Note, *Civil Commitment of Mentally Ill:* Lessard v. Schmidt, 23 DEPAUL L. REV. 1276 (1974).

6. Nathan v. Levitt, No. 74 CH 4080 (Ill. Cir. Ct., Cook County, filed July 3, 1974).

7. Parker v. Levitt, No. 74 C 963 (N.D. Ill., filed Apr. 4, 1974).

8. Rios v. Jones, No. 72 CH 6076 (Ill. Cir. Ct., Cook County, filed Oct. 24, 1972), *rev'd on appeal* No. 59965 (Ill. App. Ct., 1st Dist., filed Dec. 27, 1974).

9. Memorandum from Prakask N. Desai, Adm'r, Region II to Robert Mackie, Superintendent, Discharge and Transfer Procedures, June 18, 1974 [hereinafter cited as Memorandum].

10. *Compare* People v. Sansone, 18 Ill. App. 3d 315, 309 N.E.2d 733 (1st Dist. 1974) *with* Lessard v. Schmidt, 349 F. Supp. 1078 (E.D. Wis. 1972).

> [a] person afflicted with mental illness . . . , if that person, as a result of such mental illness, is reasonably expected at the time the determination is made or within a reasonable time thereafter to intentionally or unintentionally physically injure himself or other persons, or is unable to care for himself so as to guard himself from physical injury or to provide for his own physical needs.[11]

In *Sansone*, an emergency petition[12] alleging that the respondent was in need of mental treatment was signed by the Assistant Director of Social Service, Psychiatric Institute of the Circuit Court of Cook County.[13] The petition stated that the facts were set out in the requisite physician's certificate, which, in fact, was never attached. Moreover, the space on the petition for the statutorily required names of witnesses was left blank. "Petitioner based her belief that an emergency existed on [h]istory of behavior and psychological and psychiatric examination done on August 18, 1972, at the Psychiatric Institute of the Circuit Court of Cook County."[14] The psychiatrist stated in his report:

> Patient is cooperative during interview, he is oriented, able to answer questions but is somewhat agitated, appeared to be delusional of grandiose nature. According to him he was a U.S. Senator and, as far back as 1946 he was the only child lobbyist who was in Washington written about in newspapers. He was about 14 years old then and the diagnosis is schizophrenic paranoid type.[15]

At the commitment hearing this report was read into the record by the state. Another psychiatrist testified at the hearing that the respondent was " 'fairly oriented but not completely oriented' " and that he " 'showed quite . . . unrealistic thinking.' " He was "suffering from a thought disorder of a delusional nature."[16] The respondent also told the psychiatrist that "he had been arrested while he was ordering people from his property illegally 'on a federal order,' and that persons were occupying his property illegally, and

11. ILL. REV. STAT. ch. 91½, § 1-11 (1971). The term "mental illness" was subsequently amended to read "mental disorder." ILL. REV. STAT. ch. 91½, § 1-11 (1973).

12. Pursuant to ILL. REV. STAT. ch. 91½, art. VII (1973).

13. Persons charged with a crime and suspected of being mentally ill or unfit to stand trial are referred to the Institute for an examination. If the psychiatrist is of the opinion that a person is in need of mental treatment, a petition and physician's certificate are filed and the person is sent to a mental health center.

14. 18 Ill. App. 3d at 317-18, 309 N.E.2d at 735.

15. *Id.*

16. *Id.* at 318, 309 N.E.2d at 736.

they were going to take his house, and that was the reason he was ordering them off his property."[17] The psychiatrist "diagnosed respondent as a paranoid schizophrenic, and recommended hospitalization."[18]

The psychiatrist stated that the respondent was not dangerous to himself and could care for himself but that he could be dangerous to others in that he " 'might start a fight with someone telling them to clear off his property.' "[19] Respondent never stated to the psychiatrist that he would fight or injure anyone and the state offered no evidence that he had threatened or harmed anyone. The basis for the finding of dangerousness was the prediction of the psychiatrist who

> stated that he had known delusional patients who were not dangerous to others, but "not with this kind of delusional material," *i.e.*, delusions regarding law enforcement and law officers. Dr. Sarma testified he could not predict when respondent would become dangerous, and could not give any degree of probability of respondent's dangerousness.[20]

The first issue raised was whether the state proved that the respondent was dangerous to others[21] "at the time the determination is being made or within a reasonable time thereafter."[22] The respondent argued, as was held in *Lessard*,[23] that in order to base involuntary commitment on dangerousness to others, there must be evidence of a recent overt threat or act. Absent such evidence of dangerousness, respondent's involuntary commitment was based solely on his mental disorder and the prediction by a psychiatrist that, as a result of this disorder, he *could* be dangerous to others. This, respondent argued, is preventive detention and confinement

---

17. *Id.*

18. *Id.* "He testified that respondent's statements concerning his arrests and his ordering people from his property strongly indicated that respondent believes 'people are after him.' " *Id.* at 319, 309 N.E.2d at 736.

19. *Id.*

20. *Id.*

21. The issue of whether respondent could care for himself was also raised. On cross-examination the psychiatrist testified that the respondent "was able to care for himself" and on redirect, testified that he "would have difficulty functioning if he were released." *Id.*

22. ILL. REV. STAT. ch. 91½, § 1-11 (1973).

23. A finding that a person is dangerous must be supported by a "recent overt act, attempt or threat to do substantial harm to oneself or another." 349 F. Supp. at 1093.

based upon status which is forbidden by *Robinson v. California.*[24] The Illinois appellate court rejected this argument stating that "*Robinson* distinguished criminal punishment and detention from detention based upon law which requires medical treatment."[25] The court concluded "that a finding of in need of mental treatment, absent evidence of prior harmful conduct, is not *per se* violative of due process"[26] and stated its rationale:

> [T]he state must balance the curtailment of liberty against the danger of harm to the individual or others. The paramount factor is the interest of society which naturally includes the interest of the patient in not being subjected to unjustified confinement. We agree with respondent that the "science" of predicting future dangerous behavior is inexact, and certainly is not infallible. We also agree that the mere establishment of a mental problem is not an adequate basis upon which to confine a person who has never harmed or attempted to harm either himself or another. However, we are of the opinion that a decision to commit based upon a medical opinion which clearly states that a person is reasonably expected to engage in dangerous conduct, and which is based upon the experience and studies of qualified psychiatrists is a determination which properly can be made by the state.[27]

This formulation presents some very serious difficulties. First, it does not take into consideration that available studies indicate that even the most qualified psychiatrist simply cannot predict with any accuracy whether a person will be dangerous or not. Thus, findings of dangerousness based solely upon the opinion of a psychiatrist and unsupported by evidence of a recent overt act or threat will undoubtedly result in the commitment of many persons who are in fact not dangerous.[28]

Second, many Department of Mental Health practitioners have been unable to pass their state board examinations but are psychiatrists and physicians by virtue of a temporary license issued under the Medical Practices Act.[29] They are not allowed to practice out-

24. 370 U.S. 660 (1962). The Supreme Court declared confinement based on a status alone, in this case narcotics addiction, unconstitutional.

25. 18 Ill. App. 3d at 324, 309 N.E.2d at 739.

26. *Id.*

27. *Id.*

28. For such an opinion *see* Rubin, *Predictions of Dangerousness in Mentally Ill Criminals*, 27 ARCH. GEN. PSYCH. 397 (1972).

29. ILL. REV. STAT. ch. 91, § 14a (1973). *See* text accompanying note 64 *infra*, for discussion of the requirement that those physicians holding temporary permits must now pass an examination.

side the Department of Mental Health and are required to be under the supervision of a fully licensed physician. Many of the psychiatrists do not speak or understand the English language well enough to conduct a psychiatric interview. They have difficulty understanding the lifestyles of people drawn into the mental health process, particularly minorities. This inability to understand the language and lifestyles of the patient affects the outcome of the psychiatric interview which is the basis of the expert prediction of the psychiatrist.

Moreover, psychiatrists rarely conduct follow-up studies of past predictions of dangerousness and they are unable to testify as to the accuracy of their past predictions. Therefore, it is incumbent upon defense counsel to conduct a thorough examination of the experience and qualifications of and studies made by the psychiatrist testifying for the state.[30]

The second issue raised by respondent in *Sansone* was also argued on the basis of *Lessard*,[31] which held that the standard of proof should be "beyond a reasonable doubt."[32] The state argued that the standard should be "preponderance of the evidence."[33]

The Mental Health Code defines a psychiatrist as a physician "who devotes a substantial portion of his time to the practice of psychiatry and has practiced psychiatry for one year immediately preceding the certification of any patient." ILL. REV. STAT. ch. 91½, § 1-15 (1973).

30. On the basis of the author's experience, psychiatrists, under cross-examination, will admit that no follow-up studies of their past predictions of dangerousness have been conducted and that they do not know if their past predictions were accurate or not.

> All of the plaintiffs' experts testified that psychiatrists cannot predict that mentally ill persons will physically harm themselves with a 50% accuracy in the absence of proof of a recent dangerous act, threat or attempt.

Reply Brief for Plaintiffs at 26, 27, United States *ex rel.* Mathews v. Nelson, No. 72 C 2104 (N.D. Ill. filed Aug. 23, 1972). The expert witnesses that testified for the plaintiffs were: Professor George Magner, Associate Director of the School of Social Work, University of Illinois, Chicago Circle Campus; Professor Steven Lee Golding, clinical psychologist and Assistant Professor at the University of Illinois Department of Psychology; Dr. Bernard Rubin, psychiatrist and psychoanalyst and Associate Professor at the University of Chicago Department of Psychiatry; Dr. Jan Fawcett, psychiatrist and Professor and Chairman of the Department of Psychiatry at Rush-Presbyterian-St. Luke's Medical Center. *See also* authorities collected in Beis, *supra* note 5, at 77-78.

31. 349 F. Supp. at 1095. *See* discussion of this issue in Note, *Mental Health Law—Involuntary Commitment*, 1974 ILL. BAR J. 286.

32. 18 Ill. App. 3d at 325, 309 N.E.2d at 740.

33. *Id.*

Respondent based his argument on the juvenile cases, *In re Gault*[34] and *In re Winship*[35] in which the United States Supreme Court stated that "civil labels and good intentions do not themselves obviate the need for criminal due process safeguards."[36] The *Sansone* court replied that "the Illinois Mental Health Code not only utilizes civil labels and good intentions, but affords the individual a full panoply of due process protections," and held that the appropriate standard of proof is "clear and convincing evidence."[37] Where a person's liberty is being taken away for an indeterminate length of time based upon the opinion of a psychiatrist, the standard of proof should be higher than "clear and convincing" evidence, the standard used in most civil administrative hearings.[38]

Respondent argued that he was also denied due process because the emergency petition filed by the state did not give him adequate notice of the assertions he would have to meet at the commitment hearing. It contained no facts upon which a conclusion of dangerousness could be based and listed no names of witnesses who would testify to such facts as required by section 7-1 of the Mental Health Code.[39]

However, the court rejected this argument. The court said that the oral stipulation, amending the petition to add that the respondent was "delusional, confused and has impaired judgment," set out facts that could reasonably be anticipated to support a finding that respondent was in need of mental treatment. "Due process does not require that a person be charged with a specific dangerous overt act, but that there be a nexus between the facts asserted and a finding of 'in need of mental treatment.' "[40] The court ignored the fact that while the amended petition supported a finding that respondent had a mental disorder, it gave no indication as to why the state alleged the respondent to be dangerous or why his mental disorder

34. 387 U.S. 1 (1967).

35. 397 U.S. 358 (1970).

36. *Id.* at 365-66.

37. 18 Ill. App. 3d at 325-26, 309 N.E.2d at 741.

38. *See In re* Ballay, 482 F.2d 648, 649-50 (D.C. Cir. 1973). For a discussion *of Ballay, see* Note, *Civil Commitment—Due Process and the Standard of Proof*, 23 DEPAUL L. REV. 1500 (1974).

39. 18 Ill. App. 3d at 324, 309 N.E.2d at 740.

40. *Id.*

caused this dangerousness. At the least, the respondent and his counsel should be given some indication of the basis for the state's allegation that he is dangerous and the nexus between the allegation and his mental disorder.

The court also stated that while the petition *should* list the names of witnesses as the statute requires, defense counsel could have ascertained the names on the morning of the hearing and, if surprised, could have asked for a continuance. Further, the court noted that defense counsel did not object to the testimony of the state's witnesses and thoroughly cross-examined them. The state argued that the names of the witnesses were not available when the petition was prepared. The court held that "upon our review of the totality of the circumstances we do not believe that the petition was fatally defective."[41] In contrast, the *Lessard* court held that notice of the scheduled hearing must be given far enough in advance to afford the defense a "reasonable opportunity to prepare" and that such notice must set forth with particularity the basis for detention.[42]

The respondent in *Sansone* also maintained that he was not certified as in need of mental treatment within twenty-four hours as required by statute.[43] The respondent was examined within twenty-four hours but no certificate was filed or introduced into evidence by the state. The report of the physician who examined the respondent within twenty-four hours was read into evidence by the state's attorney. Though the report was not in the *form* of a certificate,[44] the trial court said that the report was in the *nature* of a certificate, thus finding the respondent in need of mental treatment.[45]

Respondent also argued that he was placed in double jeopardy because he had been found not in need of mental treatment two

41. *Id.* at 325, 309 N.E.2d at 740.

42. Notice of date, time and place is not satisfactory. The patient should be informed of the basis for his detention, his right to jury trial, the standard upon which he may be detained, the names of examining physicians and all other persons who may testify in favor of his continued detention, and the substance of their proposed testimony.
349 F. Supp. at 1092.

43. ILL. REV. STAT. ch. 91½, § 7-5 (1973).

44. 18 Ill. App. 3d at 328-29, 309 N.E.2d at 743.

45. *Id.* at 329, 309 N.E.2d at 743.

weeks prior in another commitment hearing. Respondent asserted "that the state should be required to show that there has been a change in respondent's condition between the time of the two hearings, and that this change can be evidenced only by proof of an overt act" or threat by respondent.[46] The court rejected the contention of former jeopardy, but stated that "even though not former jeopardy under the Fifth Amendment, misuse of multiple commitment proceedings would be violative of due process."[47] However, since there was no evidence introduced indicating that the evidence presented at both hearings was identical or that the evidence introduced at the instant hearing was based upon the same examination, historical facts and diagnosis of respondent's mental condition, the court held that there had been no showing of misuse of multiple commitment proceedings.[48]

In concluding, the court commented on the failure of the state to comply with its statutory responsibility to attach the psychiatrists' certificates to the petition.

> [W]e agree that the better practice would be to file these certificates with the clerk so that they would formally appear in the record. Such a practice would alleviate the situation in which the court now finds itself—to determine the adequacy of a document which is not before it.[49]

While the court concluded that the psychiatrists' certificates should be attached to the petition, it nevertheless held that failure to comply with the statute would not render the petition defective.[50]

The rationale of the opinion seems to have been that the determination of dangerousness need not be tied to either the present or a reasonable time in the future as required by statute.[51] Thus, statutory due process protections, cited by the court as a reason for rejecting a standard of proof beyond a reasonable doubt, are severely undermined by the court's willingness to waive those protections. When the state violates these statutory requirements, the court merely says that it is not the best practice.[52]

---

46. *Id.* at 327, 309 N.E.2d at 741-42.

47. *Id.*

48. *Id.*

49. *Id.* at 328, 309 N.E.2d at 742.

50. *Id.* at 324, 309 N.E.2d at 740.

51. *Id.* at 323, 309 N.E.2d at 739.

52. A study by Thomas Scheff of the screening procedure of mental patients highlights the dangers of relaxed due process standards. He concludes that there is a

II. TREATMENT

Nathan v. Levitt[53] is a class action on behalf of all mentally retarded persons who are seeking the highest quality of adequate, humane, and rehabilitative care and treatment through institutions, programs, and services under the jurisdiction of the Department of Mental Health.[54] The complaint alleges that mentally retarded patients are being denied adequate testing, comprehensive and individualized treatment plans, supervision and protection, and the training and education consistent with their evaluation and potential to which they are entitled under the Illinois Mental Health Code and the Illinois constitution.[55] The complaint alleges that plaintiffs, and the class they represent, have been placed in wards for the mentally ill where they they receive no treatment and where they are abused. They are requesting the court to declare that they "have a statutory and constitutional right to the highest possible quality of humane and rehabilitative care and treatment."[56]

---

strong presumption of illness on the part of courts and their psychiatrists. Scheff, *Screening Mental Patients*, in DEVIANCE: THE INTERACTIONIST PERSPECTIVE 173 (E. Rubington & M. Weinberg eds. 1968).

Scheff attributes such actions to the haste in which examinations are made, the lack of communication between psychiatrist and patient based on differences in education or language and erroneous assumptions regarding the nature of mental illness. The element of danger to oneself and others "is usually exaggerated both in amount and degree" and it is not clear whether such risks are "greater than those encountered in ordinary social life." *Id.* at 183. The assumption of danger is useful though to a judge who is subject to more criticism for erroneously releasing rather than retaining patients. *Id.* at 184.

53. No. 74 CH 4080 (Ill. Cir. Ct., Cook County, filed July 3, 1974).

54. The court divided the class into four subclasses:
   (a) All mentally ill persons who are seeking admission to Illinois Department of Mental Health facilities for the Mentally Retarded.
   (b) [A]ll mentally retarded persons placed in Illinois Department of Mental Health facilities for those in need of mental treatment.
   (c) [A]ll persons mentally retarded and mentally ill placed in a Department of Mental Health facility for those in need of mental treatment.
   (d) [T]hose persons who are mentally retarded who have been placed in Illinois Department of Mental Health facilities which don't provide treatment for the mentally retarded.

Order of Aug. 27, 1974, Nathan v. Levitt, No. 74 CH 4080 (Ill. Cir. Ct., Cook County, filed July 3, 1974).

55. Amended Complaint at 10-11, Nathan v. Levitt, No. 74 CH 4080 (Ill. Cir. Ct., Cook County, filed July 3, 1974). *See generally* ILL. CONST. Preamble; ILL. CONST. art. 10, § 1; ILL. REV. STAT. ch. 91½ (1973).

56. Amended Complaint at 9-10, 12, Nathan v. Levitt, No. 74 CH 4080 (Ill. Cir. Ct., Cook County, filed July 3, 1974).

Finally, the plaintiffs request the court to

> declare, define and specify what constitutes the minimum standard of humane and rehabilitative care and treatment required to be provided by the institutions, programs, divisions and services of DMH under the Mental Health Code and Illinois Constitution of 1970.[57]

The court is requested to enter a judgment declaring that defendants' conduct violates the provisions of the Mental Health Code and the Constitution of 1970, and to enter appropriate injunctive relief.

Another class action, *Parker v. Levitt*,[58] involves those individuals who have been found unfit to stand trial and have been placed in the custody of the Department of Mental Health until they are determined to be fit. The petition alleges that the petitioner and the class he represents are being "deprived of grounds passes, leaves, transfer to a more therapeutically appropriate mental health facility, personalized treatment and other rights and privileges available to other persons hospitalized in state mental institutions" solely because they have been charged with a crime.[59] This deprives the petitioner and the class equal protection and due process under the fourteenth amendment. A declaratory judgment is requested as is an order enjoining the practice of restricting the freedom of the petitioner and the class solely because they have been charged with a crime.[60]

A third action, which could have significantly improved the treatment of patients, was the circuit court decision in *Rios v. Jones*.[61] The court upheld an amendment to the Medical Practices Act which re-

---

57. *Id.* at 12.

58. No. 74 C 963 (N.D. Ill., filed Apr. 4, 1974). *Parker* is a class action petition for a writ of habeas corpus requesting relief under Jackson v. Indiana, 406 U.S. 715 (1972). The class consists of those who

> (a) have been charged with a crime; and
> (b) have been found to be unfit to stand trial on said charge by an Illinois Court prior to January 1, 1973; and
> (c) are still unfit to stand trial; and
> (d) have not been civilly committed; and
> (e) have been ordered to be involuntarily hospitalized until such time as they are fit to stand trial or have been hospitalized for the maximum period in which they could have been incarcerated had they been found guilty of the crime with which they are charged.

Id.

59. *Id.*

60. *Id.*

61. No. 72 CH 6076 (Ill. Cir. Ct., Cook County, filed Oct. 24, 1972).

quires physicians holding a limited license to take and pass an examination to determine if they are professionally qualified.[62] The circuit court held that all those physicians who have worked for the Department of Mental Health for less than ten years must take the examination. All those who have worked for more than ten years need not take the examination because they are protected by their civil service status.[63] However, the case was reversed on appeal.[64] Had the decision been affirmed, the quality of care received by patients could have improved.

In response to two cases, *Davis v. Levitt*,[65] which was dismissed, and *Levitzke v. Levitt*,[66] which is pending, the Department of Mental Health issued for Region II[67] a policy statement which sets out a procedure by which the Department of Mental Health informs patients being transferred to other hospitals or discharged against their will that they have a right to object to the transfer or discharge at a meeting with their therapist and the ward psychiatrist. After this meeting, if they still wish to object to the change they have a right to a hearing before the Hospital Utilization Committee.[68] Patients possess the right to have a relative, friend or attorney present at the meeting and hearing. The sole basis for a discharge has been the clinical judgment of the staff that such a discharge is in the best interest of the patient.[69] While the Department of Mental Health has provided patients with some due process rights regarding transfer and involuntary discharges, the protections are inadequate. The primary reason for transfer in Illinois appears to be administrative convenience, not a clinical judgment that such transfer is in the best interest of the patient.

---

62. ILL. REV. STAT. ch. 91, § 14a (1973).

63. Rios v. Jones, No. 72 CH 6076 (Ill. Cir. Ct., Cook County, filed Oct. 24, 1974).

64. No. 59965 (Ill. App. Ct., filed Dec. 27, 1974).

65. No. 73 C 895 (Ill. Cir. Ct., Cook County, filed July 10, 1973).

66. No. 73 C 887 (Ill. Cir. Ct., Cook County, filed July 6, 1973).

67. Chicago-Read Mental Health Center, Tinley Park Mental Health Center, Madden Mental Health Center, Elgin Mental Health Center, and Manteno Mental Health Center.

68. This is an administrative committee which hears transfer requests. *See generally* Beis, *supra* note 5.

69. *See* Memorandum, *supra* note 9.

CONCLUSION

The trend toward the application of stringent criminal due process protections to the commitment process[70] has been rejected in Illinois.[71] Moreover, the protections afforded by the Mental Health Code have been diluted.[72] Yet throughout the country advocates for patients' rights are turning to the courts to remedy the lack of care[73] and to improve the quality of treatment for patients confined to state mental institutions.[74] While the rights of patients will continue to be litigated and proposed changes in the Mental Health Code will be drafted by the Governor's Commission to Revise the Mental Health Code, substantial change in Illinois is unlikely.

---

70. Lessard v. Schmidt, 349 F. Supp. 1078 (E.D. Wis. 1972).

71. People v. Sansone, 18 Ill. App. 3d 315, 309 N.E.2d 733 (1st Dist. 1974).

72. *Id.*

73. *See* text accompanying notes 53-69 *supra*. *See generally* Wyatt v. Stickney, 325 F. Supp. 781 (M.D. Ala. 1972), *appeal docketed sub nom.*, Wyatt v. Aderholt; Burnham v. Department of Public Health, 349 F. Supp. 1335 (N.D. Ga. 1972). Upon appeal of *Wyatt* and *Burnham*, the Fifth Circuit Court of Appeals consolidated the cases. Affirming *Wyatt* and reversing *Burnham*, the court of appeals held that mental health patients have a *constitutional* right to treatment. Wyatt v. Aderholt, 503 F.2d 1305 (5th Cir. 1974). This holding goes beyond Rouse v. Cameron, 373 F.2d 451 (D.C. Cir. 1966), in which Judge Bazelon determined there was a statutory right to treatment, but only in dicta did he raise a question of a constitutional right to treatment.

See also New York State Ass'n for Retarded Children v. Rockefeller, 357 F. Supp. 752 (E.D.N.Y. 1973).

74. Donaldson v. O'Connor, 493 F.2d 507 (5th Cir. 1974); Welsch v. Likins, 373 F. Supp. 487 (D. Minn. 1974); Stachulak v. Coughlin, 364 F. Supp. 686 (N.D. Ill. 1973).

DE PAUL LAW REVIEW

Volume 24 *Winter 1975* *Number 2*

Published quarterly under the editorial direction of DePaul law students. Views expressed in this periodical are to be attributed to the authors, and not to the periodical, its editors or DePaul University.